

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7598

Investigation of Tariff filing of Vermont Marble     )  
Power Division of OMYA, Inc., requesting a rate     )  
increase and rate design changes, effective March 1,   )  
2010

Order entered: 9/14/2010

**I. INTRODUCTION**

In this Proposal for Decision, I recommend that the Vermont Public Service Board ("Board") approve, in its entirety, the Stipulation ("Stipulation") between Vermont Marble Power Division of OMYA, Inc. ("Vermont Marble"), Vermont Quarries Corporation ("Vermont Quarries"), and the Vermont Department of Public Service ("Department") that was filed on July 16, 2010. The Stipulation, if approved, would resolve all issues in this docket. Under the Stipulation, Vermont Marble will be entitled to rates that produce a 25.07% increase in annual retail electric revenues.

**II. PROCEDURAL HISTORY**

On January 6, 2010, Vermont Marble filed with the Board proposed tariff revisions requesting an overall increase in its retail rates and changes to its rate design, to take effect March 1, 2010, on service-rendered basis (Tariff Filing No. 8124). The proposed rate request reflected an increase to residential, light commercial, and street lighting rates of 23.71 percent, and an increase to commercial primary service rates of 51.66 percent.

On February 2, 2010, Board staff convened a workshop to discuss the tariff filing. The workshop was attended by representatives of Vermont Marble and the Department. On February 8, 2010, Vermont Marble filed additional information in response to questions raised in the workshop.

On February 12, 2010, the Department informed the Board that it had reviewed Vermont Marble's proposed tariff filing and recommended that the Board open an investigation into the proposed rate increase. In its letter, the Department identified the following areas of concern: (1) Vermont Marble's cost-allocation factors; (2) Vermont Marble's methodology of allocating demand expenses; (3) Vermont Marble's failure to provide a detailed cost-of-capital calculation; and (4) Vermont Marble's rate-design structure.

On February 23, 2010, the Board opened this investigation and appointed me to serve as the Hearing Officer in this proceeding. I held a prehearing conference in this docket on March 11, 2010.

On March 26, 2010, Vermont Marble filed direct testimony to support its rate increase request.

I conducted a public hearing on April 8, 2010, in Proctor, Vermont. Six members of the public provided comments at the public hearing. These individuals raised concerns regarding the impact of the rate increase on ratepayers, the impact of the operations of hydro-electric and cogeneration units on the rate-base calculations, and electric power disconnection during emergencies.

On March 31, 2010, in an Order on Motion to Intervene, I granted permissive intervention to Vermont Quarries.

In an April 29, 2010, memorandum, I requested that parties address several issues raised by the attendees at the April 8 public hearing. On May 17, 2010, Vermont Marble filed a response to the request with concurrence of the other parties.

On May 14, 2010, Vermont Marble advised the Board that it had agreed to a sixty-day extension to the seven-month deadline for a final order pursuant to 30 V.S.A. § 227.<sup>1</sup>

On July 16, 2010, the Department, Vermont Marble, and Vermont Quarries filed a Stipulation that settles all outstanding issues in this docket. In an August 5, 2010, memorandum from the Clerk of the Board, the parties were asked to respond to a number of questions concerning the Stipulation. On August 20, 2010, the parties filed responses to the questions

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1. Letter from Edward Schwiebert, Esq., for Vermont Marble, to Susan Hudson, Clerk of the Board, dated May 14, 2010.

raised in the Clerk's August 5 memorandum. In the August 5 memorandum, the parties were also informed that I intended to admit into the evidentiary record the testimony and exhibits filed by Vermont Marble; the Stipulation and its attachments; the Danby Quarry Maintenance Improvement Plan, submitted in response to discovery from the Department on April 16, 2010, and referred to in the Stipulation; Vermont Marble's February 8, 2010, response to the Board staff information request; Vermont Marble's May 17, 2010, responses to the Hearing Officer's questions; and the responses to the questions raised in the August 5 memorandum. No party objected to the admission of these documents.<sup>2</sup> Additionally, no party has requested a hearing on the Stipulation, and I conclude that no hearing is needed.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I hereby report the following findings and conclusions to the Board.

### **III. FINDINGS**

1. An increase in Vermont Marble's annual revenues from retail customers of 25.07% (or \$4,070,043), effective with service rendered after appropriate notice to customers as discussed in Findings 23 and 24 below, results in just and reasonable rates. Exh. Joint-1 at 2.

2. Vermont Marble's annual cost of service is \$20,306,023. Exh. Joint-1, Attachment 1.

3. The majority of Vermont Marble's load, some 95%, is represented by its affiliated industrial load and the balance, approximately 5%, is represented by Vermont Marble's retail load, primarily residential and commercial customers in Proctor and Danby, Vermont. Allard pf. at 3.

4. The last Vermont Marble rate review was conducted in Docket 5409, Board Order of July 18, 1990. Because the retail load is relatively small in comparison to the affiliated industrial load and the costs of conducting a rate case, Vermont Marble has allowed the affiliated industrial

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2. I hereby admit the following documents in the record as evidence in this proceeding: Prefiled Testimony of Todd Allard; Exhs. A through L, and VMPD TAA-1; Stipulation as Exh. Joint-1; Danby Quarry Maintenance Improvement Plan as Exh. Vermont Marble-3; response to the Board staff information request into evidence as Exh. Vermont Marble-1; responses to the Hearing Officer's questions into evidence as Exh. Vermont Marble-2; the response dated August 20, 2010, to the August 5 Memorandum as Exh. Joint-2; and Exhs. Revised B, Revised C-1, and Revised K-1.

operations to subsidize retail customers. The rate increase is now necessary due to the escalation in cost of power and cost of operations. Allard pf. at 5-6.

5. At the last rate case, the Danby Imperial Quarry ("Quarry") was included in Vermont Marble's affiliated load. Since the last rate case, the Quarry has been leased to Vermont Quarries, an unaffiliated third party that purchases electricity from Vermont Marble. The Quarry represents a 500 kW load at the end of a 20.5 mile 44 kV transmission line ("Quarry Transmission Line") that serves no other customers. The Quarry is the only customer served by the commercial primary service rate. Allard pf. at 6-7.

6. Vermont Marble's proposed rate request reflected an increase to residential, light commercial and street lighting rates of 23.71%, and an increase to commercial primary service rates of 51.66%. The larger increase for commercial primary service rates reflects the costs associated with maintaining the Quarry Transmission Line for one customer. The proposed rate increases of 23.71% and 51.66% were based on Vermont Marble's conclusion that it is inappropriate to require one customer or class of customers to subsidize another. Allard pf. at 6-8.

7. The Stipulation resolves all issues in this docket, including rate design, by providing all retail customer groups with the same across-the-board rate adjustment. A fully allocated cost-of-service study is necessary to properly evaluate and support the rate design initially proposed by Vermont Marble. Exh. Joint-2 at 1.

8. Rates should be set with no or at least minimal subsidization across customer classes. The across-the-board rate increase followed by a fully allocated cost of service will result in more accurately set rates, and therefore less subsidization, in the longer term while minimizing, in length and magnitude, any potential cost-shift or subsidization in the near term. Exh. Joint-2 at 2.

9. The Stipulation provides that, within two years following the date of today's Order, Vermont Marble will perform or cause to be performed a fully allocated cost-of-service study for all customer classes then served by Vermont Marble. Vermont Marble agrees to seek input from the Department during the initial planning stage on the methodology and objectives of the fully allocated cost-of-service study. Exh. Joint-1 at 4.

10. The Stipulation provides that Vermont Marble will use an average weighted cost of capital for calculating revenue requirements of 7.94%. The weighted cost of capital provided by the Stipulation is consistent with that utilized by other investor-owned utilities in Vermont. Exhs. Joint-1 at 2 and Joint-2 at 2.

11. The Stipulation provides that Vermont Marble will eliminate from its rate base \$19,304 that was associated with the so-called North Transmission Line. The \$19,304 is more properly associated with the northern hydroelectric stations installations from the late 1980's, and was mistakenly returned to rate base. Allard pf. at 12-13; exhs. Joint-1 at 2, Joint-2 at 3, and Revised C-1.

12. The Stipulation provides that Vermont Marble will change the rate-year adjustments for power supply costs to reflect known and measurable changes by increasing the projected demand component by \$877,832 and reducing the projected energy component by \$696,437 for a net power supply cost increase of \$181,395. Exhs. Joint-1 at 2 and Joint-2 at 3.

13. The Stipulation provides that Vermont Marble will change the rate-year adjustments for administrative expenses by reducing administrative expenses by \$381,752. The change reflects the removal of all non-reoccurring administrative expenses and the adjustment of certain expenses to be consistent with other known and measurable costs. Exhs. Joint-1 at 2 and Joint-2 at 3-4.

14. The Stipulation provides that Vermont Marble will continue the use of a newly replaced meter at the Quarry. The new meter is capable of registering demand and energy on a fifteen-minute-interval basis. Exh. Joint-1 at 2.

15. The Stipulation provides that Vermont Marble will continue the use of eighteen newly installed faulted-circuit indicators on the Quarry Transmission Line in order to assist in the location of faults along the Quarry Transmission Line. Exh. Joint-1 at 3.

16. The Stipulation states that Vermont Marble has completed the Right-of-Way Vegetation Survey and the field work necessary for the Pole Testing Survey as contemplated in the Danby Quarry Maintenance Improvement Plan ("Improvement Plan"). The Stipulation provides that Vermont Marble will complete the analysis of the field work necessary for the Pole Testing Survey by October 1, 2010. Exhs. Joint-1 at 3 and Vermont Marble-3.

17. The Stipulation indicates that, since March 2009, Vermont Marble has performed right-of-way clearing of 102 spans of the 423 total spans on the Quarry Transmission Line. The Stipulation provides that Vermont Marble will perform or cause to be performed right-of-way clearing of an additional 98 identified spans (Section 1 described in the Right-of-Way Vegetation Management Plan portion of the Improvement Plan) of the Quarry Transmission Line, beginning in September 2010, or sooner, for completion on or before December 31, 2010. Exhs. Joint-1 at 3 and Vermont Marble-3.

18. The Stipulation provides that Vermont Marble will remove or cause to be removed from along the Quarry Transmission Line, and not limited to the 98 spans referenced in Finding 17, any currently known danger trees or those identified as such in the Right-Of-Way Vegetation Survey, subject to such landowner consent that Vermont Marble believes is necessary or desirable under the circumstances. Exh. Joint-1 at 3-4.

19. The Stipulation provides that Vermont Marble will replace the electromechanical relays in the West Rutland Substation (Breaker B-3) that protect the Quarry Transmission Line with a microprocessor relay with digital-fault recording and distance-to-fault indication to facilitate fault location and remediation. The Stipulation further provides that Vermont Marble will provide a means for direct, prompt, and automatic communications of any outage (as defined in Board Rule 4.901(A)) on the Quarry Transmission Line to Vermont Marble's Proctor Control Center, with such work to be completed on or before November 30, 2010. Exh. Joint-1 at 4.

20. The proposed 25.07% rate increase will not yield sufficient cash flow to enable Vermont Marble to implement all of the system improvements provided by the Stipulation (described in findings 14 to 19, above). The improvements will be initially funded by OMYA, Inc., and Vermont Marble will seek cost recovery in future rate proceedings. Exh. Joint-2 at 4.

21. Vermont Marble has eliminated its line-maintenance staff (two employees), which is expected to reduce the overall cost of line maintenance by \$150,000 annually. Vermont Marble will contract with third parties to conduct necessary maintenance. Based on recent use of third-party resources to conduct line maintenance on Vermont Marble's system, outage response times are not expected to increase substantially or to a degree that impairs safe and reliable operations. Exhs. Vermont Marble-2 at 1, G and H.

22. Vermont Marble will retain two qualified electrical personnel to respond in the event of a fire or other emergency that requires assistance from Vermont Marble. These personnel will be qualified to perform emergency disconnections. In emergency situations that require immediate response, Vermont Marble has the ability to de-energize sections of the distribution system from its Proctor Control Center, which is manned 24 hours a day, 7 days a week. Exh. Vermont Marble-2 at 1-2.

23. Vermont Marble will notify its customers of the rate increase in a bill insert at least thirty days prior to the implementation of the rate increase on a service-rendered basis. Exh. Joint-2 at 4-5.

24. Vermont Marble will work with the Department to develop language for the bill insert to explain why the final rate increase is higher for residential, light commercial and street lighting customers than initially proposed by the utility and to identify potential additional forms of communication to ratepayers to the extent necessary. Exh. Joint-2 at 4-5.

#### **IV. CONCLUSION**

After reviewing Vermont Marble's original tariff filing, the evidence in this proceeding, and the Stipulation, I am persuaded that approval of the Stipulation will result in just and reasonable rates and is in the public interest, and I recommend that the Board approve it. Furthermore, I am persuaded that the concerns raised in this proceeding by the Department, Vermont Quarries, and by public comments will be addressed through the requirements imposed on Vermont Marble under the terms of the Stipulation.

I recognize that the proposed rate increase provided under the Stipulation is significant, particularly given current economic conditions. However, I also note that this represents the first rate increase in 20 years for Vermont Marble customers. As noted in Finding 4, since the last rate case in 1990, Vermont Marble has allowed its affiliated industrial operations to subsidize retail customers, and a rate increase is necessary due to escalation in costs of power and operations.

The Stipulation provides for a resolution of all issues in this docket, including rate design, by providing all retail customer groups with the same across-the-board rate increase of 25.07%.

For residential, light commercial, and street lighting customers, the across-the-board rate adjustment is higher than the 23.71% increase proposed in Vermont Marble's tariff filing, and lower for the commercial primary service customers. As the parties recognized, the across-the-board rate increase may result in some subsidization across customer classes in the near term. However, parties also agreed that a fully allocated cost-of-service study is necessary to properly evaluate and support the rate design initially proposed by Vermont Marble.<sup>3</sup> Under the terms of the Stipulation, the parties have agreed to an across-the-board rate revision to be supplemented by a fully allocated cost-of-service study, which Vermont Marble has agreed to perform within two years. Given that the Stipulation represents a compromise agreement among parties with opposing interests and Vermont Marble agrees to perform a fully allocated cost-of-service study within two years, I conclude that the settlement embodied in the Stipulation will result in just and reasonable rates. I recommend that the Board Order include a condition requiring that Vermont Marble conduct a fully allocated cost-of-service study and file with the Board the completed cost-of-service study and any proposed tariff changes.

In addition, the Board is currently considering the proposed sale of assets of Vermont Marble to Central Vermont Public Service Corporation.<sup>4</sup> The two-year time period for conducting the fully allocated cost-of-service study should allow sufficient time for the Board to reach a decision in the sale case before Vermont Marble would need to begin the study. I conclude that it is appropriate for the sale case to be resolved before requiring Vermont Marble to conduct the cost-of-service study, given the costs of conducting the study.

At an April 8 public hearing members of the public raised concerns regarding: (1) impacts of non-operational hydro-electric and cogeneration units on the rate-year costs; and (2) electric power disconnection during emergencies. In an April 29 memorandum, I requested that parties address these issues. In its May 17 filing, Vermont Marble confirmed that extended outages at its hydro-electric facilities do not impact the rate-year costs since average generation and outages for the hydro-electric generations are assumed and that the stand-by cogeneration

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3. Exh. Joint-2 at 1.

4. See Petition of the Sale of Assets of Vermont Marble to Central Vermont Public Service Corporation, July 30, 2010.



units provide economic value to Vermont Marble's system by providing forward reserve capacity to the ISO-NE market.<sup>5</sup> As addressed in Findings 21 and 22, Vermont Marble maintains personnel available on a 24-hour basis to address emergency situations, including the need for emergency disconnection. Therefore, based on the evidence in the record, I conclude that the concerns raised at the public hearing have been adequately addressed.

Because this Proposal for Decision recommends approval of the Stipulation in its entirety, it is not adverse to any party, and therefore, has not been circulated among the parties, pursuant to 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 8<sup>th</sup> day of September, 2010.

s/ Mary Jo Krolewski  
Mary Jo Krolewski  
Hearing Officer

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5. See Exh. Vermont Marble-2.

**V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings and recommendation of the Hearing Officer are adopted.
2. The Stipulation among the Vermont Department of Public Service, Vermont Marble Power Division of OMYA, Inc., and Vermont Quarries Corporation filed on July 16, 2010, is approved.
3. Vermont Marble Power Division of OMYA, Inc. shall undertake all actions required under the terms of the Stipulation.
3. Vermont Marble Power Division of OMYA, Inc. is entitled to rates that will produce annual revenues of \$20,306,023 (a 25.07% increase). The increased rates shall be effective on a service-rendered basis no sooner than 30 days after Vermont Marble Power Division of OMYA, Inc. notifies customers of the rate increase.
4. Vermont Marble Power Division of OMYA, Inc. shall file compliance tariffs within two weeks of the issuance of this Order.
5. Within two years of the issuance of this Order, Vermont Marble Power Division of OMYA, Inc. shall perform or cause to be performed a fully allocated cost-of-service study for all customer classes then served by Vermont Marble Power Division of OMYA, Inc. Vermont Marble Power Division of OMYA, Inc. shall seek input from the Department of Public Service during the initial planning stage on the methodology and objectives of the fully allocated cost-of-service study. Vermont Marble Power Division of OMYA, Inc. shall file with the Public Service Board the completed cost-of-service study and any proposed tariff changes.

Dated at Montpelier, Vermont, this 14<sup>th</sup> day of September, 2010.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: September 14, 2010

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*